the side-walks and the curb line. Breaks in these plots were made at intervals to allow of passage from the side-walk to the street. In order to protect these plots, a wire was strung from small stakes about two feet in height and thirty feet apart. There was considerable sag in the wire by reason of the distance between the successive stakes. Defendant, (plaintiff below), while attempting to cross one of these plots in the night time, tripped over one of these wires and was injured, for which injury he seeks to hold the city liable. *Held,* the city was liable. "The fact that a municipality may maintain, or permit to be maintained, a barrier around such strips to prevent pedestrians from going thereon does not authorize such a dangerous construction as would be a menace to the life or safety of a pedestrian exercising due care for his own safety in an attempt to cross over the same." *Village of Barnesville* v. *Ward,* (Ohio 1911), 96 N. E. 937.

This case is novel both because it is one of first instance in Ohio, and also because of the scarcity of adjudicated cases involving liability in connection with "civic beautification." Where a municipality has power to improve streets sufficient in width by parking them, it has the power to control such improvements and to protect them by suitable barriers. *Dotey* v. *District of Columbia,* 25 App. D. C. 232. *Cartwright* v. *Liberty Telephone Co.,* 205 Mo. 126, 103 S. W. 982; *Weller* v. *McCormick,* 47 N. J. L. 397, 1 Atl. 516, 54 Am. Rep. 175; *Adams* v. *Syracuse Lighting Co.,* 121 N. Y. Supp. 762, 137 App. Div. 449. It may protect them even as against an abutting property owner who made the improvement. *Baker* v. *Town of Normal,* 81 Ill. 108. But the municipality must exercise this power of control with prudence and within reason, and not wantonly and carelessly. *Cartwright* v. *Liberty Telephone Co., supra.* And such is the decision in the principal case. This barrier as erected was declared to be "not a barrier to prevent, but rather a device to trip and punish anyone who would attempt to cross this strip in the night season." The municipality cannot in this way undertake to punish a user of the street for his failure to appreciate the improvement made. "That a pedestrian has not sufficient civic pride to refrain from going upon or crossing this strip does not justify the placing of a nuisance there that might probably cause his death or do him great bodily harm, if he should attempt to do so."

MUNICIPAL CORPORATIONS—PARTIAL VACATION OF STREETS—TITLE TO LAND VACATED.—A city, in order to narrow one of its streets for a portion of its length, passed an ordinance in 1888 vacating a strip ten feet wide from each side of said street. In 1901, another ordinance was passed vacating a similar strip from another portion of the same street. The second ordinance expressly provided that the city quit-claimed the part so vacated to the abutting property owners, and that it should become a part of their several properties. This ordinance was declared void because of defects in its passage. The city later paved this street, and sought to assess plaintiffs, property owners along the street, for the cost of this improvement. The latter contend that since the ordinance of 1888 they are not abutting owners; that there is a strip ten feet wide separating their properties from the street; and that the fee in this strip is in the city. Therefore they contest the assessment. *Held,* by LADD, J., the

fee in the strip vacated remains in the city to be used as it sees fit; the city may declare it again a part of the street; it has done so by levying this assessment against the abutting properties. Therefore plaintiffs are liable. By WEAVER AND SHERWIN, JJ., a vacation once made cannot be recalled. Both the city and the owners have treated the strip as belonging to the properties adjacent; and such was the intention under the earlier ordinance, as is shown by the express provisions in the later void ordinance. For this reason the fee is in the abutting owners and they are liable. *Sutton et al.* v. *Mentzer et al.* (Iowa 1912), 134 N. W. 108.

Here we have the unique situation of a divided court deciding the point in issue both ways and arriving at an identical conclusion in both cases. One judge says that the fee is in the city; the other two, that it is in the abutting owners. When the tract has been platted, the platted boundary lines must control, and the assessment must be limited to the lot or parcel of ground which actually abuts on the street, and cannot be extended to a contiguous lot, though the latter with the abutting lot constitutes a single tract, which is used for a single purpose, and fronts on the street improved. *Smith* v. *City of Des Moines*, 106 Ia. 590, 76 N. W. 836. As to the ownership of vacated streets, the decisions are in conflict. Where the municipality has a mere easement in the land for street purposes the fee upon vacation reverts to the abutting owners, discharged from the easement. *Barclay* v. *Howell's Lessee*, 6 Pet. 498, 513; *Harrison* v. *Augusta Factory*, 73 Ga. 447; *Haberman* v. *Baker*, 128 N. Y. 253; *Day* v. *Chambers*, 62 Tex. 190. In the case of a statutory dedication, as in the principal case, where the fee of the street is in the city, a diversity of opinion has arisen. Some courts hold that the city's fee in the street is a base fee, of which the municipality is divested upon vacation, and which reverts to the original owner or his grantee. *Gebhardt* v. *Reeves*, 75 Ill. 301; *Matthiessen, etc. Co.* v. *LaSalle*, 117 Ill. 411; *Wirt* v. *McEmery*, 21 Fed. 233. The reasoning in these cases would apply with equal cogency to granting the reverter to the abutting owner. It is expressly so held in some jurisdictions. *Stephens* v. *Taylor*, 51 Ohio St. 593; *Hamilton &c. Co.* v. *Parish*, 67 Ohio St. 181; *Bothwell* v. *Denver Union Stockyards Co.*, 39 Colo. 221. Statutory provisions in many States are to the same effect, 3 DILLON MUN. CORP., Ed. 5, § 1160. Other courts hold that the fee remains in the city upon vacation, notably the Iowa courts. *Pettingill* v. *Devin*, 35 Ia. 344; *Day* v. *Schroeder*, 46 Ia. 546; *Lake City* v. *Fulkerson*, 122 Ia. 569. And the city may convey such fee. *Lake City* v. *Fulkerson, supra; Marietta Chair Co.* v. *Henderson*, 121 Ga. 399. These cases do not decide whether the grantee in such cases would take subject to the abutter's right of access. If the city can convey such fee, it would seem that it is not unreasonable to hold that it can itself declare that the land shall be once more a part of the street. But can this be done by implication? It would seem that the municipality should perform some act of rededication before it can assert that such property is part of the street for assessment purposes. As to the possession and use of the land in question, and the affirmation of title in the abutting owners by adverse possession, the Iowa courts are committed to the doctrine that the maintenance of streets in a municipality is a governmental function,

and for this reason the statute of limitations does not run against the city with respect to encroachments therein. *Quinn* v. *Baage,* 138 Ia. 426, 114 N. W. 205; *City of Waterloo* v. *Union Mill. Co.,* 72 Ia. 437; *Taraldson* v. *Town of Lime Springs,* 92 Ia. 187. As a general rule the maxim, "*Nullum tempus occurrit regi,*" does not apply to corporate bodies such as cities, towns and other municipalities, especially when private rights have become involved. *Clements* v. *Anderson,* 46 Miss. 581; *Knight* v. *Heaton,* 22 Vt. 481; *Metropolitan R. R. Co.* v. *District of Columbia,* 132 U. S. 1; *Arapahoe Village* v. *Albee,* 24 Neb. 242. 3 DILLON MUN. CORP., Ed. 5, § 1188. Even though their powers in a limited sense are governmental. *May* v. *Cass County District,* 22 Neb. 205; *Armstrong* v. *Dalton,* 15 N. C. 568; *Dudley* v. *Frankfort Trustees,* 12 B. Mon. 610; *Big Rapids* v. *Comstock,* 65 Mich. 78. However, as regards a right purely public, the statute of limitations does not run against a municipality, and the use of streets is regarded as such a right. *Commonwealth* v. *Alburger,* 1 Whart. 469. 3 DILLON MUN. CORP., Ed. 5, §§ 1189 and 1193, and cases cited. The rule as deduced from a comparison of the authorities would seem to be, as to titles to streets by adverse possession, that the statute of limitations does not run as to a municipality's claim in the same unless circumstances creating an equitable estoppel intervene. 3 DILLON MUN. CORP., Ed. 5, § 1194. No such circumstances appeared in the principal case, as neither the city nor the abutting owners had exercised any positive act of ownership over the property involved. By a strange intermingling of the Iowa rule and the general rule in the matter of vacated streets, the court arrived at a conclusion just to all concerned but not easy to sustain on legal principle under the Iowa authorities.

PLEADING—ABSENCE OF AD DAMNUM CLAUSE.—Action in case for injury due to defendant's negligent maintenance of an open ditch. The declaration did not contain the usual *ad damnum* clause but there appeared at the commencement the following, "(plaintiff)—complains of—(defendant), who has been duly summoned to answer the plaintiff of a plea of trespass on the case, to recover against him the sum of ten thousand dollars ($10,000.00) damages." Defendant demurred to the declaration because of absence of the *ad damnum* clause, contending that the above statement was simply an introductory recital of the contents of the summons, and not an averment of damages. *Held,* the demurrer was properly overruled. POFFENBARGER, J., dissenting. *Jenkins* v. *Montgomery* (W. Va. 1911), 72 S. E. 1087.

The court held that whether the statement be regarded as an averment or merely as a recital, still it was sufficient because it accomplished the purpose of the *ad damnum* clause, *i. e.,* to inform the defendant of the amount of damages, and said "Now, if after verdict the writ is properly regarded as a part of the record, to support the verdict, why may it not be so regarded on demurrer to sustain the declaration? Is not the laying of damages in the declaration mere formal matter? Is it not a statement of a legal conclusion, and not, therefore, an indispensable averment? Our conclusion is that it is sufficient if it appear in the declaration in any form." In the previous case of *McGlamery et al.* v. *Jackson,* 67 W. Va. 417, the court had held, POFFENBARGER,